



STOLL
KEENON
OGDEN

STATE & FEDERAL TAX PRACTICE

Timothy Eifler
Louisville
502.568.4208
Timothy.Eifler@skofirm.com

Jennifer S. Smart
Lexington
859.231.3619
Jennifer.Smart@skofirm.com

Erica L. Horn
Lexington
859.231.3037
Erica.Horn@skofirm.com

Jackson White
Lexington
859.231.3617
Jackson.White@skofirm.com

Kentucky Supreme Court Holds Taxpayer Entitled to Tangible Property Tax Refund Because No Protest Necessary Prior to Refund Claim

Jennifer S. Smart

In *Dept. of Revenue v. Cox Interior, Inc.*, No. 2010-SC-000794-DG (June 20, 2013) (To Be Published), the Kentucky Supreme Court (“Court”) held that the taxpayer, Cox Interior, Inc. (“Cox Interior”) was not required to file a protest to tangible property tax assessments before filing a refund claim for the taxes. The Court held Cox Interior was entitled to recover its tangible property tax refund claims and distinguished the case from cases involving issues of valuation of real or personal property, corrections of clerical errors and erroneous assessments of property not owned by the taxpayer.

The Department of Revenue (“Department”) issued Notices of Assessments of tangible property taxes to Cox Interior. Cox Interior did not protest the assessments, but paid the taxes in March 2006. It then later determined the Department’s audit improperly listed manufacturing machinery on the non-manufacturing schedule of the return, and the assessments were improper. Cox Interior then filed for refund of the property taxes in July 2007, 16 months after payment of the taxes. The Department denied the refund claim stating that Cox Interior should have protested the assessments within 45 days of the tax notices. The Kentucky Board of Tax Appeals, the Franklin Circuit Court and the Court of Appeals held in favor of Cox Interior. The Supreme Court granted discretionary review because of the Department’s allegation that the Court of Appeals’ decision conflicted with *Cromwell Louisville Associates, LLP v. Commonwealth*, 323 S.W.3d 1 (Ky. 2010), where that Court held that a taxpayer must first protest a real property assessment before seeking a tax refund.

The *Cox Interior* Court went through a lengthy analysis of the refund statute applicable to property taxes and unconstitutional taxes, KRS 134.590. The Court held the clear language of the statute indicated as long as a taxpayer individually applied for a refund within two years from when the tax was paid, the refund was made in writing and stated the specific grounds upon which it was based, it will be considered to be a validly filed refund claim. Additionally, the Court noted a denial of a refund may be protested and appealed, just as an assessment may be appealed, pursuant to KRS 131.110 and 131.240.

The Court also noted when a taxpayer challenges the assessment of real property (not tangible property), an additional specific statute is applicable to that situation. In the case of real property, the refund statute requires that KRS 133.120, which details specific and detailed additional procedural steps not applicable to protests and appeals of tangible property, must be followed. Further, the Court noted the refund statute, KRS 134.590, refers to additional situations in which specific procedural statutes must followed. These situations include: taxpayer disputes

regarding valuation of property (KRS 132.486), correction of clerical errors (KRS 133.110) and claims of erroneous charges of tax on property not owned by the taxpayer (KRS 133.130). The Court concluded that the General Assembly could not have intended that all property tax cases must be first protested before refund claims could be brought since the effect would be to repeal the refund statute with its two-year statute of limitations period, and to substitute a 45-day period applicable to protests.

The Court noted that Cox Interior was not challenging the valuation of real or personal property, was not seeking correction of a clerical error and was not claiming that it was erroneously charged with taxes on property it did not own. Instead, Cox Interior was arguing that the Department erroneously classified its equipment as non-manufacturing machinery. The Court then reiterated that a taxpayer had two years to file a property tax refund under KRS 134.590, and there was no requirement of filing a protest beforehand. The Court stated, however, if a taxpayer disputes the valuation of either real or tangible property, alleges a clerical error or disclaims ownership of property, then the specialized protest procedures applicable to those situations must be complied with prior to filing a refund claim.

The Court also held that the Department had not provided any information to taxpayers (including Cox Interior) or promulgated any regulations indicating taxpayers must first file a protest before filing a claim for refund. The Court accordingly affirmed the Court of Appeals' decision and held that Cox Interior was entitled to its refund claim of tangible property taxes.